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In the Supreme Court of the United States

OCTOBER TERM, 1947

No. 676

STOWE SPINNING COMPANY, PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD

No. 757

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

STOWE SPINNING COMPANY, ACME SPINNING COMPANY, PERFECTION SPINNING COMPANY AND LINFORD MILLS, INC.

CROSS-PETITION OF THE NATIONAL LABOR RELATIONS BOARD FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT AND BRIEF IN OPPOSITION TO THE PETITION OF STOWE SPINNING COMPANY IN NO. 676

The Solicitor General, on behalf of the National Labor Relations Board, prays that a writ of certiorari issue to review that portion of the decree of the United States Circuit Court of Appeals for the Fourth Circuit, entered on December 22, 1947 (R. 148–149); which denied in

part the petition of the Board for enforcement of its order against Stowe Spinning Company and denied in full the petition of the Board for enforcement of its order against Acme Spinning Company, Perfection Spinning Company and Linford Mills, Inc. The Solicitor General, on behalf of the Board, further prays that the petition for a writ of certiorari to review that portion of the decree enforcing, in part, the Board's order against Stowe Spinning Company, be denied.

OPINIONS BELOW

The opinion of the Circuit Court of Appeals (R. 137–147), is reported in 165 F. 2d 609. The findings of fact, conclusions of law, and order of the Board (R. 1–26), are reported in 70 N. L. R. B. 614.

JURISDICTION

The decree of the Circuit Court of Appeals was entered on December 22, 1947 (R. 148–149). The petition for a writ of certiorari in No. 676 was filed on March 15, 1948. On March 22, 1948, by order of the Chief Justice, the time in which the National Labor Relations Board might file an opposition to petition for writ of certiorari and a cross-petition for a writ of certiorari in this case was extended to and including April 22, 1948.

The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925, and Section 10 (e) and (f) of the National Labor Relations Act.

QUESTIONS PRESENTED

In No. 757

The employers, owners of a company-town, maintain a hall for the convenience of employee-residents and others which is the only place in the community appropriate for group meetings. Because of their hostility to unionization and their desire to impede self-organizational efforts among the employee-residents, the employers denied to a labor organization permission to use the hall for a union meeting. The question presented is whether, in the circumstances of this case, the Board could properly find that the employers, by such denial of the use of the hall, interfered with the exercise of the rights guaranteed employees under Section 7 of the Act, in violation of Section 8 (1).

In No. 676

Whether the Board's finding that Stowe Spinning Company discharged four employees for the purpose of discouraging union membership and self-organizational activity among its employees is supported by substantial evidence.

STATUTE INVOLVED

The pertinent provisions of the National Labor Relations Act are set forth in the Appendix, *infra*, pp. 37–38.

STATEMENT

Upon the usual proceedings under Section 10 of the Act, the Board, on August 26, 1946, issued its findings of fact, conclusions of law and order (R. 1–26). The pertinent facts, as found by the Board and as shown by the evidence, may be summarized as follows:[1]

I. THE MEETING HALL ISSUE

Stowe Spinning Company, Acme Spinning Company, Perfection Spinning Company, and Linford Mills, are four North Carolina corporations, with interlocking directorships, hereinafter collectively referred to as the employers, each of which operates a cotton spinning mill in the unincorporated village of North Belmont, North Carolina (R. 3–5; 28, 30–31).[2] The employers own a large number of houses adjacent to their respective mills which they rent to employees and their families (R. 4; 29, 31–32, 34, 102).[3] These

[1] In the following statement record references preceding the semicolon are to the Board's findings; succeeding references are to the supporting evidence.

[2] Geographically, North Belmont is located two and a half miles from the City of Belmont, North Carolina (R. 4; 29).

[3] Acme owns about 158 such houses, Stowe 100; Linford and Perfection each own about 75 houses (R. 4; 34).

groups of houses, called "mill villages," together with the employers' mills, comprise North Belmont (R. 4; 29). The town is policed by a deputy sheriff who is paid by the employers (R. 4; 36–37, 38).

There are only three buildings of a more or less public nature in the town. One is a public school building, owned by the state, but controlled by a school board composed entirely of officers of the employers (R. 4, 8; 32, 114–115). Another is a motion picture theater, owned and controlled by the employers jointly, but operated by a lessee (R. 4, 8; 32–33, 37, 84, 109–110). The third building, known as the P. O. S. of A. Building—the initials denoting the Patriotic Order Sons of America—is likewise owned and controlled by the employers and houses a United States Post Office and a grocery store on the first floor, and an assembly or meeting hall, seating approximately two hundred persons, on the second (R. 5; 33–42). This building was erected by the employers in 1937 to provide shopping facilities and a meeting place for the convenience of the employee-villagers, who, by virtue of their employment in the community, were isolated from other public facilities (R. 8, 10; 35, 38).[4]

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[4] Prior to the erection of the building in 1937, a group of employees, representing a fraternal order, known as the Patriotic Order Sons of America, or P. O. S. of A.; of which many of the employers' employees were members, attempted to purchase the land from the employers for the purpose of

Control and rental of the P. O. S. of A. Building is vested in an agent of the employers, D. P. Stowe (R. 4, 5; 30, 100). However, officers of the P. O. S. of A. were permitted in practice to exercise full control over the use of the hall, and they gave permission to other organizations and groups to use the hall upon request, without interference by the employers (R. 9; 43–44, 45, 48). The hall was used not only for meetings of the fraternal order but also, on numerous occasions, for other community and employee activities, such as church banquets, Ladies Aid Society meetings, Christmas parties for school children, and to house a safety school conducted by the employers for their employees (R. 9; 43–44).

In December 1944, the companies' employees began to organize and sought the assistance of the Textile Workers Union of America, affiliated with the C. I. O., hereinafter called the Union (R. 4, 5; 78). Shortly thereafter, at the request of George W. Gainey, a Stowe employee who had

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erecting such a building which could be used for meetings of the order, and other types of meetings (R. 48, 35, 38, 40–41). The employers advised the group that they planned to build a building containing a post office and stores on the site, and offered to add an additional story to the structure which could be used by the P. O. S. of A. as a meeting hall (*ibid.*). The hall was to be made available rent free, since as a representative of the employers testified at the hearing, "the revenue from those stores would take care of the expenses of the building" (R. 35, 48). Before the building was erected meetings of the fraternal order were held in the schoolhouse auditorium (R. 8; 42, 48).

assumed leadership of the organizational drive,[5] Robert Harris, a national representative of the Union, arrived in North Belmont to arrange a mass meeting of Stowe employees (R. 5–6; 77–78). After conferring with Gainey and others as to convenient places in town for holding such a meeting, Harris approached O. R. Stewart, an official of P. O. S. of A., for the purpose of obtaining the use of the P. O. S. of A. hall (R. 6; 45–46, 48, 78–79). Stewart referred him to President Black of the P. O. S. of A. (*ibid.*). On January 22, 1945, Harris went to Black and, after identifying himself as a representative of the Union, asked for permission to use the hall on the following Sunday in order that the employees of Stowe might meet and complete their union organizing campaign. Black informed Harris that the Union could use the hall and requested the payment of a nominal sum for the janitor's fee. Harris offered to pay more and Black left the matter to him. When Harris stressed the importance of a definite commitment for the use of the hall because leaflets announcing the meeting place had to be prepared and distributed, Black assured him that he was head of the lodge and his word was final. (R. 6; 79–80.) Harris thereupon had leaflets mimeographed and distributed inviting Stowe employees to attend a

[5] Gainey was, as the Board and the court below found, subsequently discharged because of his union activities. His discharge is discussed *infra*, pp. 17–21.

union meeting at the P. O. S. of A. hall (R. 6; 80, 116).

On January 23, Stewart asked Black what he had done about Harris' request for use of the P. O. S. of A. hall. When Black informed him that he had given Harris permission to use the hall, Stewart replied, "You shouldn't have done it for he ain't nothing but a Textile organizer". (R. 6–7; 46.) Black then reported the matter to Superintendent Cauble of the Acme mill (R. 7; 46). Cauble instructed him to do nothing further until Cauble had conferred with the "officials" at Belmont (R. 7; 46). Later that day, Cauble notified Black that D. P. Stowe, the employers' agent in charge of the P. O. S. of A. building, would communicate with Stewart that evening (R. 7; 46). Thereafter Stewart was summoned to D. P. Stowe's office (R. 7; 49).[6] D. P. Stowe informed Stewart that the employers had built the P. O. S. of A. hall as a place for meetings of that organization and "meetings of that type" and if any other meetings were to be held there, "we were to make the arrangements here." When D. P. Stowe asked Stewart why he had given Harris permission to hold a meeting there, Stewart answered that Black, who had referred Harris to him, did not know the latter was a union organizer. Stowe thereupon instructed

[6] J. Harold Lineberger, a ranking officer of the Perfection, Linford and Acme Companies, was also present at this interview (R. 4; 30, 49).

Stewart to inform Harris that "the building would not be available." (R. 7; 49–50.)

On January 26, after the leaflets announcing that a union meeting would be held in the P. O. S. of A. hall had been distributed, Black, on instructions from Stewart, notified Harris that he had received orders from D. P. Stowe not to permit the Union to use the hall "under any circumstances" (R. 7; 49, 81). Harris then sought to obtain permission to use the schoolhouse from J. W. Miller, who was chairman of the School Board and also superintendent of the Perfection Mill (R. 7–8; 82–83, 114). Miller told Harris that it was impossible to heat the schoolhouse because of a shortage of coal. When Harris stated that a fire was unnecessary, Miller informed him that D. P. Stowe had issued instructions not to permit the Union to use the schoolhouse for its meeting. (R. 7–8; 82–83.) Harris then sought permission to use the theater, also owned by the employers, for the meeting, but was informed by the manager that he was not permitted to allow the use of the theater for any purpose other than the showing of pictures (R. 8; 84). Frustrated in their efforts to find a sheltered meeting place in the town, the employees held the scheduled meeting on the street outside the P. O. S. of A. building (R. 7; 81).[7]

[7] Because of the unavailability of indoor meeting places no further union meetings have been held in North Belmont (R. 85–86).

The Board found that in view of the employers' practice of permitting the hall to be used by all other groups and organizations, their refusal to allow its use for organizational purposes "constituted unlawful disparity of treatment and discrimination against the Union" (R. 9). It further found on the basis of the foregoing facts, and of the evidence, discussed *infra*, pp. 13–21, showing that Stowe Spinning Company had discriminatorily discharged four employees for the purpose of discouraging membership in and activity on behalf of the Union, that the "sole purpose" of Stowe's withdrawal, on behalf of the employers, of permission to use the hall for a union meeting, "was to impede, prevent and discourage self-organization and collective bargaining by the [companies'] employees within the meaning of Section 7 of the Act" (R. 12).

The Board, as an alternative ground for its decision, concluded that under the circumstances of this case, irrespective of the employers' motive (R. 12),

> * * * by refusing to permit their employees to exercise the right to meet on company-owned property for the purpose of holding a union meeting, when no other suitable property in the community was available for the purpose, * * * the [employers] have placed an unreasonable impediment on freedom of communication and of assembly essential to the exercise of employees' rights guaranteed by Section 7

> of the Act. By their conduct in revoking the grant of the privilege to use the hall and thus denying the use of the hall to the Union, the [employers] interfered with, restrained and coerced their employees in the exercise of the rights guaranteed in Section 7 of the Act, in violation of Section 8 (1) thereof.

In support of this conclusion the Board pointed out (R. 10):

> The "right to self-organization" is more than an intangible concept. The history of labor organization has established a pattern of methods almost universally utilized by employees in self-organization, deprivation of any one of which makes inroads upon the "right."* Foremost among these methods is the general meeting,* the *sine qua non* of all true collective action, the basic constitutional right of peaceable assembly.* * * * by refusing to permit the Union to use the only available meeting place in the community, a hall erected and used by the [employers] for the benefit of citizens isolated from other public facilities by virtue of their employment in the community, the [employers] in fact deprived their employees of this basic right. The [employers] do not claim that "inconvenience" or "dislocation of property rights" would result from the Union's use of its property.* Indeed, no reason at all was offered by the [em-

*Footnotes omitted.

> ployers'] agent Stowe for countermanding Black's grant of permission to Harris to use the hall. Against the bare property right urged by the [employers] the necessity of the employees for a place to hold an organizational meeting clearly preponderates.*

The Board rejected the contention, advanced in the opinion of the dissenting member of the Board (R. 23–24), that the employers were required to deny permission to the Union to use the hall for a meeting by virtue of the provisions of Section 8 (2) of the Act which prohibit an employer from granting "support" to a labor organization (R. 11–12). The Board stated that, "in a company town, where all meeting facilities are owned by the employer, the use of such facilities by a labor organization is necessary if the employees are really to be free to exercise their rights under the Act," (R. 11), and consequently, under such circumstances, the mere grant of a meeting place to a union by an employer would not in and of itself constitute unlawful assistance to that union (R. 11). The Board pointed out that this was particularly true where, as here, the Union offered to pay for the hall (R. 11–12).*

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* In this connection the Board (R. 12, n. 18) referred to its decision in *Matter of Standard Oil Company of California*, 61 N. L. R. B. 1251, 1284, n. 33, in which it approved the use of an employer-owned hall by a labor organization for regular meetings where the labor organization paid a nominal amount yearly for such use.

II. THE DISCRIMINATORY DISCHARGES

A. *John R. Hall*, an experienced spinning room doffer, was employed by Stowe in October 1944, as a doffer on the second shift from 3 p. m. to 11 p. m. (R. 12, 13; 86–87, 51). A few weeks after he entered Stowe's employ, he was also assigned to the first shift, from 7 a. m. to 3 p. m., as head doffer (R. 13; 87). Thereafter, until his discharge, Hall worked on both shifts, six days a week or a total of 80 to 96 hours each week (R. 13; 88, 99). His work, as Stowe admitted was "very satisfactory" (R. 15; 59).

Hall's wife was also employed by Stowe on the third shift from 11 p. m. to 7 a. m. (R. 13; 86, Tr. 237). The Halls occupied one of the company-owned houses (R. 12; 86).

Hall became interested in the Union and joined it in mid-January, 1945 (R. 5–6, 12; 89). Thereafter, he assisted George Gainey in soliciting fellow employees to join the Union (R. 5–6, 12; 89, 90, 97). Both Overseer McCarn and Mill Superintendent Kale, who were the management representatives responsible for Hall's dismissal, were aware of his activity in behalf of the Union (R. 14, 18; 94, 97, 101, Tr. 296).

Hall was discharged on February 10, 1945 under the following circumstances:

The employees at the Stowe mill had no regular lunch period; they ate during their working time whenever it was possible to do so (R. 13; 51).

After Hall began working two shifts daily, he was permitted by Stowe to go to his home, approximately 100 yards distant from the mill, for his meals, once in the morning for breakfast, after his wife returned from her shift, and again later in the day for lunch (R. 13; 92–93).[9]

On the morning of February 10, Hall reported for work at 6:45 a. m. (R. 13; 91). Half an hour later, after having doffed several frames he went home for breakfast as usual (R. 13; 92). Upon his return to the mill, 30 to 45 minutes later, Second Hand Childers, Hall's immediate supervisor (R. 13; 111), who assertedly had found that a number of frames were idle,[10] informed him that he "would have to stay on [his] job and run it better" (R. 13; 94). This was the first time that Hall had been reprimanded (R. 13; 94). A few minutes later, Overseer McCarn cautioned Hall in a similar vein (*ibid.*). Hall, thereupon angrily complained that "piecing

[9] No objection had been voiced to Hall's regular practice of going home for breakfast (R. 92), and he had received express permission to go home for lunch (R. 93). Second Hand Childers, Hall's supervisor, admitted at the hearing that the doffers under Hall could leave without obtaining permission (R. 13; 112).

[10] The Board found it unnecessary to resolve the conflicting testimony as to the number of frames which became ready for doffing during Hall's absence, in view of McCarn's testimony that nothing that Hall had done or failed to do would have prompted Stowe to dismiss him and that Stowe would have retained him in its employ if he had not allegedly quit (R. 15, n. 25; 53–54).

up behind the doffers", *i. e.*, putting new yarn on the spinning frames (Tr. 255), was not part of his job as head doffer[1] and stated that before he "would piece up behind the doffers any more [he] would quit" (R. 13; 94). McCarn, as Hall testified, then "said to me that I had something to do with signing of those applications for these unions, and my answer was 'yes,' and then he said 'Well, you empty my house and I will call it not running your job' " (R. 13–14; 94, cf. 101). When Hall answered, "No, I won't quit. You will fire me," McCarn, according to his own testimony, replied, "No, you did quit"[2] and instructed Childers to replace Hall (R. 14; 52, 111–112).

Hall, upon leaving the mill, went to the house of George Gainey, the Union's leader in the mill (R. 14; 72, 95, 101). Gainey, accompanied by Hall, then went to the office of Superintendent Kale, where Gainey informed the superintendent that Hall, "one of our Union members," had been laid off and asked to have him put back to work (R. 14; 72–73, 95). Kale promised to look into the matter and communicate with them later (R. 14; 72–73, 95). Although Stowe was experiencing difficulty in obtaining doffers, neither Gainey nor

[1] Hall, who had taken this additional work upon himself to "help out" the doffers, had previously been told by Childers that "you are ruining your doffers by doing it" (R. 125–126).

[2] Kale admitted that as Gainey and Hall were leaving Hall said that "McCarn had told him he was laying him off on account of union activities" (R. 101).

Hall received further word from Kale (R. 14, 15; 102, 72, 95, 54).

A few days after Hall's employment was terminated, one of the spinners who had worked with him, asked Overseer McCarn whether Hall had left the mill. McCarn answered in the affirmative and added that he believed Hall was a union organizer and had been active in obtaining members for the Union. (R. 14; 97.)

Before the Board, Stowe contended that Hall voluntarily quit his job, and that, for this reason, the allegations of the complaint that Hall was discriminatorily discharged are unsupported by evidence. However, the evidence recited above (pp. 14–16) shows, and the Board found (R. 15), that Hall did not quit but was discharged by Stowe. Thus, both McCarn and Childers testified that, almost immediately after Hall stated that he would quit rather than continue "piecing up behind the doffers," Hall changed his mind, and declared that he would not quit but would remain until Stowe "fired" him (R. 15; 52, 111–112). McCarn testified that he refused to accept Hall's change of mind because "it was too late," and because "he felt * * * [he] would be better off without [Hall]" (R. 14; 53, 54). McCarn also testified that he "didn't want [Hall] back" (R. 15; 54).[13]

[13] In its petition (pp. 7–8), Stowe apparently contends that Hall never receded from his position that he would quit rather than continue to piece up behind the doffers. This contention

Moreover, although it was Stowe's usual practice to attempt to dissuade employees from leaving (R. 15; 102, 55), and the mill was short of doffers at the time (R. 15; 54, 102), Stowe not only made no effort to retain Hall but instead seized upon his declaration of intention to quit, ignored his change of mind, and effectively terminated his employment.

B. *George W. Gainey*, his wife *Mabel*, his daughter *Emma Louise* and a son Alfred, began to work for Stowe in February 1943 (R. 16; 63).[11] The work of all the Gaineys, except the son who is not directly involved in these proceedings, was regarded as satisfactory by Stowe (R. 17; 104). Mrs. Gainey was a better than average worker (R. 17; 74, 55). The Gaineys occupied one of the company-owned houses (R. 17; 63).

In December 1944, Gainey joined the Union and assumed leadership of the drive to unionize his fellow employees (R. 5; 63–70). He obtained

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ignores completely the testimony of Stowe's witnesses McCarn and Childers. Moreover, even if Hall had remained adamant on this point, his position would not have served to explain McCarn's action in discharging him. Piecing up behind doffers was not part of Hall's job (R. 94), and, indeed, he had previously been advised by Childers not to do it (R. 125–126). Stowe's assertion that Hall was discharged for his mere refusal to do that which his job did not require of him itself establishes that, at best, Stowe seized upon Hall's statement as a pretext, and that the real motive for his discharge lay elsewhere.

[11] Gainey was employed as a sweeper in the spooler room; his wife as a spinner; his daughter as a winder and his son as a doffer (R. 63).

numerous memberships for the Union and attended various union meetings (*ibid.*). It was at his request that the Union's national organizer came to North Belmont to assist in the drive (*ibid; supra,* pp. 6–7).

Stowe was fully aware of Gainey's activities in behalf of the Union (R. 18). In January, 1945, Overseer McCarn, in the course of a conversation with Gainey, told him that it was not necessary to have a union in the mill because the Government was fixing prices and wages. He then asked Gainey who the members of the Union were and asked whether certain specific individuals belonged. Gainey informed him that he and his family had joined the Union. (R. 16; 71, 76.) On February 10, when Hall was discharged, Gainey, as leader of the Union, undertook to request Superintendent Kale to reinstate him (*supra,* p. 15). In making the request, Gainey informed Kale that he was a member of the Union and that a substantial number of employees were also members (R. 14; 72–73). On February 24, two weeks after this occurrence, George Gainey, his wife and daughter were discharged (R. 17; 73–74).

The discharges occurred under the following circumstances:

On the day of the discharge, Overseer McCarn discharged a boy for not doing his work properly. Alfred Gainey, George Gainey's eighteen year old son, who is not a complainant in this case,

thereupon quit his job in protest against the other boy's discharge. (R. 17; 55–56.) McCarn, without communicating with the senior Gainey, immediately instructed Overseer Ballard to discharge all the other members of the Gainey family as they reported for work on the next shift (R. 17; 114, 57). Pursuant to these instructions, George, Mabel and Emma Louise Gainey were discharged that day. (R. 17; 73–74).

Before the Board, Stowe asserted that it was its practice to evict all members of a family from a company-owned house whenever one member ceased working for it (R. 17; 103, Tr. 311). It also asserted that since it was short of doffers, it was necessary to discharge the entire Gainey family, when Alfred, who was a doffer, quit, in order to make room for another doffer. (R. 17; 58).

These assertions were not sustained by the credible evidence. Except for its bare assertion that it was its policy to evict and dismiss all members of a family when one member quit, Stowe offered no evidence establishing the existence of such a policy.[15] And even assuming that it was Stowe's policy to regain possession of any of its

[15] Superintendent Kale was unable to recall a single instance where this alleged policy had been invoked by Stowe (R. 101). On the other hand, the record shows at least one instance where a member of a family quit but Stowe nevertheless permitted the family to continue occupying a company-owned dwelling and the other members of the family to continue working for it (R. 107–108).

houses whenever a member of the family occupying it quit its employ, this scarcely explains the summary dismissal of the three Gaineys. Not all of the employees of Stowe lived in company-owned houses. Some lived in the country and others in town (R. 17; Tr. 312, R. 108). In these circumstances, as the Board found, an employer, not prompted by a discriminatory purpose, would normally be expected to permit the Gaineys to continue working and to suggest that they seek other living quarters (R. 17). Stowe made no such reasonable suggestion; on the contrary, it dismissed the three Gaineys summarily and without affording them an opportunity to seek other quarters and at the same time continue working for Stowe. Finally, there is nothing in the record to show that it was necessary to evict the Gaineys in order to make room for another doffer to replace Alfred Gainey. No doffer had applied for work with Stowe nor was one awaiting employment when the Gaineys were dismissed (R. 17; 106).

C. *The Board's conclusions with respect to the discharge of Hall and the Gaineys.* On the basis of the foregoing evidence the Board found (R. 18–19) that Stowe discharged Hall and the Gaineys because of their union membership and activity.

The Board noted that Stowe had indicated its opposition to the Union when it refused to permit it to use the P. O. S. of A. hall (R. 18; *supra*, p. 10); that Overseer McCarn, who was immedi-

ately responsible for the dismissal of the four employees involved in these proceedings, had sought to deter the employees from joining the Union which he termed unnecessary (R. 19, *supra*, p. 18); and that both McCarn and Superintendent Kale, to whom Hall appealed unsuccessfully for reinstatement, were aware that Hall and George Gainey were the principal proponents of the Union in Stowe's mill (R. 18; *supra*, pp. 13, 15, 18).

These facts, coupled with the incredible excuses advanced by Stowe for the termination of their employment, led the Board to conclude that the four employees were discharged because of their membership in and activity on behalf of the Union, in violation of Section 8 (3) and (1) of the Act (R. 18–19).

The Board further found (R. 19) that the conduct of Overseer McCarn in interrogating George Gainey at length concerning the union membership of various employees while at the same time seeking to deter employees from joining the Union, constituted an additional violation of Section 8 (1) for which Stowe was responsible.

III. THE BOARD'S ORDER

On the basis of the foregoing findings the Board ordered Stowe Spinning Company, Acme Spinning Company, Perfection Spinning Company and Linford Mills, Inc., to cease and desist from refusing to permit the use of the P. O. S. of A. hall by their employees or by the Textile

Workers Union of America, C. I. O., or by any other labor organization for purposes of self-organization and collective bargaining; and upon request, to permit the hall to be used for such purposes and to post appropriate notices (R. 21–22). The Board also ordered Stowe Spinning Company to reinstate with back pay the four employees found to have been discriminatorily discharged, to cease and desist from discouraging membership in the Union by discriminatorily discharging any of its employees or by discriminating in any other manner in regard to their employment, to cease and desist from in any other manner interfering with, restraining or coercing its employees in the exercise of rights guaranteed in Section 7 of the Act, and to post appropriate notices (R. 21–23).

IV. THE DECISION IN THE COURT BELOW

On July 16, 1947, the Board filed in the court below a petition to enforce the Board's order (R. 129–136). On December 22, 1947, the court issued its opinion (R. 137–147), and on the same day entered its decree (R. 148–149), in which it set aside *in toto* the Board's order against Acme Spinning Company, Perfection Spinning Company and Linford Mills, Inc., and set aside the Board's order against Stowe Spinning Company insofar as it required Stowe to make the P. O. S. of A. hall available for self-organizational meetings. The court agreed with the Board's findings

that in refusing to sanction the use of the hall for a union meeting, the employers were motivated by a desire to impede unionization (R. 139–140), and were denying to the Union facilities which they regularly made available to all other groups and organizations (R. 139–141). The court rejected, however, the Board's conclusion that by exercising their property rights in this fashion the employers had violated Section 8 (1) of the Act. The court stated that although the refusal to grant use of the hall was "inspired by hostility to the union," since an employer is privileged in the exercise of the right of freedom of speech to oppose unionization "he may surely decline to perform an affirmative act which will encourage and assist a union in its organizational efforts" (R. 140). The court held that "There is no general provision of the Act which requires an employer to treat a labor union in the same manner as it treats other persons or organizations which are not concerned with the interests or activities of labor" (R. 139); "if the owners had freely given the use of the hall to the union as it had been given in the past to the patriotic order and to other social gatherings, it might well have been argued that an infraction of the statute had occurred", (R. 141). In the latter respect the court agreed with the dissenting Board member that if the employers had permitted the Union to use the hall, the employers would have risked a charge that

they had thereby violated Section 8 (2) of the Act (R. 141–142). It concluded that the Board's order violated the due process clause of the Fifth Amendment by compelling "the companies to surrender their other [than plant] property against their will for uses of which they did not approve" (R. 145, 142).

The court enforced the Board's order insofar as it requires Stowe Spinning Company to reinstate with back pay the four employees found to have been discriminatorily discharged, and to cease and desist from in any manner violating Section 8 (1) and (3) of the Act (R. 145–147).[16]

SPECIFICATION OF ERRORS TO BE URGED

1. The court below erred in holding that the Board's order requiring the employers to make the P. O. S. of A. hall available for union meetings deprives the employers of their property without due process of law.

2. The court below erred in holding that an employer may properly withhold from use by a labor organization a meeting hall which is available for use by all persons and organizations not engaged in labor activities.

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[16] Petitioner Stowe raises no question concerning the propriety of the Board's finding (R. 19), that it violated Section 8 (1) of the Act by its anti-union statements and by questioning employees concerning their union membership while seeking to induce them to refrain from joining the Union, or concerning the propriety of the provisions of the order based on this finding.

3. The court below erred in holding that in a company-town, the employer may, for the sole purpose of impeding a union's organizational efforts, deny to the union access to a hall which the employer owns, when the hall is the only sheltered place in town in which meetings can be conducted.

4. The court below erred in failing to enforce in full the order of the Board.

REASONS FOR GRANTING THE WRIT

1. The decision below is in conflict with the principle stated in the decisions of this Court in *Republic Aviation Corp.* v. *National Labor Relations Board*, and *National Labor Relations Board* v. *LeTourneau Co. of Georgia*, 324 U. S. 793. In those cases the Court upheld the power of the Board to remove certain impediments to the exercise of the rights of self-organization and collective bargaining guaranteed employees in Section 7 of the National Labor Relations Act, even though such impediments are imposed by employers through the exercise of their property rights. In the *Republic* case the employer prohibited employees from soliciting union membership in the plant on their own free time. 324 U. S. at pp. 794–795. In the *LeTourneau* case the employer prohibited employees from distributing union literature on employer-owned parking lots. 324 U. S. at pp. 796–797. In both cases the Board rejected the contention of the employers that their property rights were decisive of the validity of their re-

fusals to permit their premises to be used for union activities.[17] The Board assessed the impact of the restrictions imposed by the employers upon the opportunity for effective exercise of employee rights guaranteed by the Act, and, against this detriment to employee interests, balanced the employers' need for such restrictions to protect their legitimate interests. In both cases the Board concluded that, on balance, the employers' property interests were insufficient to justify the impediments upon union activity which flowed from the restrictions imposed by the employers on the use of their property by employees.

This Court upheld the power of the Board to work out in this manner an adjustment between the need of employees for "opportunity to organize" and the need of employers "to maintain discipline in their establishments". 324 U. S. at pp. 797–798. The Court held that since the Board had adequately explicated the reasoning which led it to conclude that the employees must be permitted to conduct the particular

[17] In its opinion in the *LeTourneau* case, 54 N. L. R. B. 1253, 1259, the Board quoted and relied upon the opinion of the Circuit Court of Appeals for the Second Circuit in *National Labor Relations Board* v. *Cities Service Oil Co.*, 122 F. 2d 149, 152: "It is not every interference with property rights that is within the Fifth Amendment and * * * Inconvenience, or even some dislocation of property rights, may be necessary in order to safeguard the right to collective bargaining." The paragraph of the Board's opinion containing this excerpt is quoted with approval in the Court's opinion in the *LeTourneau case*, 324 U. S. 793, 802, n. 8.

organizational activities there involved on the employers' property if they were to have adequate opportunity to exercise their self-organizational rights, and since the employers had shown no special circumstances by virtue of which the proposed employee activities on their property would have resulted in substantial injury to legitimate business interests, the Board's conclusions were proper.

As in the *LeTourneau* case, the Board in the instant case set forth in full the reasoning which led it to conclude that the employers' refusal to permit the P. O. S. of A. hall to be used for union meetings was an unwarranted and illegal interference with the statutory right of employees freely to assemble for purposes of discussing unionization (*supra,* pp. 10–12). The Board pointed out the importance of an appropriate and convenient meeting place to the success of employee organizational efforts and found that the employers' denial of the only available meeting place in the company-town tended to impede organizational efforts and thus imposed a detriment upon interests which the Act was designed to protect. The Board contrasted the effect of the employers' action upon the statutory right of the employees with the possible detriment to employer property interests which would flow from permitting the use of the hall for union meetings. It noted that the employers did not even claim that they would suffer any damage or inconvenience if

such use were permitted. They stood solely upon their bare property right to exercise complete dominion over premises which they owned; their right so to use their property as to frustrate the self-organizational efforts of their employees. The Board concluded that where, as here, denial of access to an employer-owned meeting hall results at least in substantial inconvenience to employees attempting to exercise their rights under the Act, and where such denial is not necessary to protect any legitimate property or business interests of the employer, the statute requires that access be permitted (R. 12).

The court below rejected the Board's conclusions and the reasoning upon which they were based. It ignored the impact of the denial of access to a meeting hall upon the opportunity of employees in the company-town to exercise their statutory rights. It concentrated exclusively on the property right of the employers in the meeting hall, and held that the Fifth Amendment barred the Board from requiring the employers "to surrender their * * * property against their will for purposes of which they did not approve" (R. 145, 142).

The court attempted to distinguish the *Republic* and *LeTourneau* cases, on the ground that "The conflict in the fundamental rights of the parties to labor disputes [in those cases] had little relation to the employer's property and caused little or no interference with its devotion to the pur-

poses of the owner" (R. 144).[18] The distinction is without substance. There is no claim and no showing in the instant case that if the Union had been permitted to hire the hall as it requested, the employers would have suffered even the slightest inconvenience or interference either with their business or with any uses which they desired to make of the hall. The Union offered to pay even more than the cost of the janitor's fee (R. 6; 79-80). There is no claim or showing that the Union was denied permission to use the hall because the time of the meeting was inappropriate, or because the meeting would have conflicted with any other scheduled activity. The Union was advised that it could not use the hall "under any circumstances" (*supra*, p. 9), and, as the Board found (R. 12), the only reason for the employers' refusal was their desire to impede employee self-organization. Moreover, the court below is in error with respect to the impact of the holding in the *LeTourneau* case upon the business interests of the employer. In that case the employer banned literature distribution of all kinds on the parking lots to avoid littering and pilfering from parked autos by distributors. 324 U. S. at p. 797. The Board, in its decision, did not deny that if distribution of

[18] The court stated that the union activities involved in the *Republic* and *LeTourneau cases*, "did not interfere substantially with the business of the employer, or inconvenience him at all" (R. 144).

union literature was permitted some littering might result. 54 N. L. R. B. at pp. 1261–1262. Requiring the employer to permit distribution of union literature on the parking lots, therefore, imposed upon the employer the alternative of making and enforcing a rule against littering or paying the cost of cleaning litter from the lots. This Court sustained the Board's holding that despite the detriment to employer property interests the necessity of affording adequate opportunities for the exercise of self-organizational rights required that permission be granted for the distribution of union literature on the parking lots.

The court below also attempted to distinguish the *Republic* and *LeTourneau* cases on the ground that there "The premises of the employer were necessarily occupied by the whole group of employees assembled to operate the business" (R. 144), and the case of *Marsh* v. *Alabama*, 326 U. S. 501, 506, in which the *Republic* case is cited with approval, on the ground that there the sidewalks "were freely used by the general public" (R. 143). To the extent that the court thus implied that there had been a dedication of the employer's property to employees in the *Republic* and *LeTourneau* cases, and to the public in the *Marsh* case, different in kind from the dedication of the P. O. S. of A. hall by the employers in this case, the court erred. In the *Marsh* case, this Court expressly refused to disturb the holding of the

Supreme Court of Alabama that the company had not dedicated its streets to the public, and that the Jehovah's Witness was therefore a trespasser thereon (326 U. S. at p. 505, n. 2). To the extent that there was dedication in the *Marsh* case, or in the *Republic* and *LeTourneau* cases, there was dedication in the instant case. The hall was erected in the first place for the convenience of employees, who were required, for the employers' advantage, to live in the company-town. Never, save in the case of the Union, had the employers objected to its use as a meeting place by groups composed of employees and non-employees. In this case the meeting hall was used by the employee-townsfolk no less freely than the streets in the *Marsh* case were used by the general public. Just as in the *Marsh* case the company objected not to the presence of the Jehovah's Witness on the street, but only to her activity there, so in this case the employers objected not to the presence of the group in the hall, but only to the purpose of their meeting.

The holding of the court below that Section 8 (2) of the Act tended to justify the employers' refusal to permit the Union to use the hall for a meeting, also conflicts with the ruling of this Court in the *LeTourneau* case. In that case the Circuit Court of Appeals for the Fifth Circuit similarly held (143 F. 2d 67, 68), that Section 8 (2) justified the employer in refusing to permit company-owned parking lots to be used as a

"theater" for self-organizational activities. The point was pressed in this Court by the employer [19] and was overruled *sub silentio*.

The decision below is also in conflict, we believe, with the decision of the Circuit Court of Appeals for the Sixth Circuit in *National Labor Relations Board* v. *Lake Superior Lumber Corp.*, No. 10410, decided April 5, 1948. In that case the court upheld the power of the Board to order an employer to permit union organizers to visit employees in bunkhouses owned by the employer, which were used by employees as sleeping quarters, where the employees lived in a lumber camp and, like the employees in the instant case, spent both their rest and work time on the employer's premises. Under such circumstances, as this Court pointed out in the *Republic* case, "union organization must proceed upon the employer's premises or be seriously handicapped" (324 U. S. at p. 799). In company-towns, meeting halls, no less than houses, are appurtenances to the employer's business operations.[20]

2. In another respect the decision below is in conflict with decisions of the United States Circuit Courts of Appeals for the Second, Fifth, Seventh, Eighth, and Tenth Circuits.[21] These

[19] See Brief for the LeTourneau Co., No. 452, October Term, 1944, pp. 19–20.

[20] Labine, Herbert J., *The Cotton Mill Worker* (Farrar & Rinehart, Inc., 1944), p. 51.

[21] *National Labor Relations Board* v. *Columbia Products Corp.*, 141 F. 2d 687, 688 (C. C. A. 2); *National Labor Rela-*

courts support the Board's view, enunciated in the *Peyton Packing* case, 49 N. L. R. B. 828, 843–844,[22] that restrictions upon union activity on an employer's premises which the employer may properly impose to protect legitimate business interests, are violative of Section 8 (1) of the Act if they are imposed for the purpose of impeding unionization. In the *Gallup American* case, *supra,* the Circuit Court of Appeals for the Tenth Circuit, without questioning the right of the employer to prohibit all displays of advertising on stone boulders located on his premises, held that the employer violated Section 8 (1) of the Act by prohibiting the painting of union signs on the boulders while permitting other types of advertising to be painted there. In the *Columbia Products* case, *supra,* the Circuit Court of Appeals for the Second Circuit, while conceding the right of the employer to make and enforce rules prohibiting employees from visiting other departments during lunch periods in the interests of plant discipline, held the application of such a rule to prevent an employee from visiting other departments for the purpose of electioneering for

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tions Board v. *Peyton Packing Co.*, 142 F. 2d 1009, 1010 (C. C. A. 5), certiorari denied, 323 U. S. 730; *National Labor Relations Board* v. *William Davies Co.*, 135 F. 2d 179, 181 (C. C. A. 7); *Carter Carburetor Corp.* v. *National Labor Relations Board*, 140 F. 2d 714, 716 (C. C. A. 8); *National Labor Relations Board* v. *Gallup American Coal Co.*, 131 F. 2d 665, 667 (C. C. A. 10).

[22] Quoted with approval in *Republic Aviation Corp.* v. *National Labor Relations Board*, 324 U. S. 793, 803–804, n. 10.

a labor organization was violative of the Act when the rule had never been enforced as to employees who visited other departments for any other purpose and when the employer's motive was not to maintain discipline but rather to impede unionization. In the *Peyton Packing, Davies,* and *Carter Carburetor* cases, *supra,* the Circuit Courts of Appeals for the Fifth, Seventh and Eighth Circuits held that plant rules prohibiting solicitation on company premises on the employee's own time, though otherwise unobjectionable, were, as applied to bar union solicitation, violative of the Act, because they were promulgated for the purpose of impeding unionization.

In the instant case the Board found that the employers' refusal to permit the P. O. S. of A. hall to be used for a union meeting was motivated by a design to impede unionization (R. 9, 12). The court below did not dispute this finding but held nevertheless that the employers had not thereby violated the Act. It stated: "An employer may * * * take any side in a labor controversy provided that his conduct does not amount to coercion; * * * and if an employer may exercise this freedom without violating the Act, he may surely decline to perform an affirmative act which will encourage and assist a union in its organizational efforts" (R. 140). This holding of the court below appears to be irreconcilable with the decisions of other circuits above referred to, *supra,* pp. 32–34.

3. The Board believes that the questions here presented are of importance in the administration of the Act. The decision below impairs the power of the Board to protect the opportunity of employees in company-towns throughout the land to exercise their statutory rights to self-organization and collective bargaining. Prior to the passage of the Act employers in company-towns frequently, as a means of frustrating unionization, refused to permit meeting halls in the town to be used for union activities.[23] It is important to the Board to know whether it is powerless to put an end to this practice.

ARGUMENT IN OPPOSITION TO THE PETITION IN NO. 676

Petitioner Stowe's contention that substantial evidence is lacking to support the Board's conclusion that Hall and the Gaineys were discharged for the purpose of discouraging union membership and activity presents no question of importance in the administration of the Act, and no conflict of decisions is shown. In any event, as the facts set forth in the *Statement* show, *supra*, pp. 13–21, and as the court below held (R. 145–147), the Board's conclusion is amply supported by the evidence.

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[23] Mitchell, George Sinclair, *Textile Unionism and the South* (University of North Carolina Press, 1931), p. 84; Fitch, John A., *The Causes of Industrial Unrest* (Harper & Bros., 1924), pp. 189–191, 197.

CONCLUSION

The question presented in the Board's petition for a writ of certiorari is of substantial public importance. The manner in which the court below decided this question conflicts with decisions of this Court and with decisions of other Circuit Courts of Appeals. It is respectfully submitted that the Board's petition for a writ of certiorari in No. 757 be granted, and that the petition for a writ of certiorari in No. 676 be denied.

PHILIP B. PERLMAN,
Solicitor General.

ROBERT N. DENHAM,
General Counsel,
National Labor Relations Board.

APRIL 1948.

APPENDIX

The pertinent provisions of the National Labor Relations Act (Act of July 5, 1935, 49 Stat. 449, 29 U. S. C. 151 *et seq.*) are as follows:

SEC. 1.

* * * * *

It is hereby declared to be the policy of the United States to eliminate the causes of certain substantial obstructions to the free flow of commerce and to mitigate and eliminate these obstructions when they have occurred by encouraging the practice and procedure of collective bargaining and by protecting the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection.

* * * * *

SEC. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection.

SEC. 8. It shall be an unfair labor practice for an employer—

(1) To interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7.

* * * * *

(3) By discrimination in regard to hire or tenure of employment or any term or

condition of employment to encourage or discourage membership in any labor organization * * *.

* * * * *

SEC. 10.

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(c) * * * If upon all the testimony taken the Board shall be of the opinion that any person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue and cause to be served on such person an order requiring such person to cease and desist from such unfair labor practice, and to take such affirmative action, including reinstatement of employees with or without back pay, as will effectuate the policies of this Act. * * *

* * * * *

(e) * * * The findings of the Board as to the facts, if supported by evidence, shall be conclusive.

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